

Service Date: July 22, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER Of U S WEST	)	UTILITY DIVISION
COMMUNICATIONS, INC.'S Petition for	)	
Declaratory Rulings on the Jurisdiction	)	DOCKET NO. 93.5.23
of the Commission and for Appropriate	)	
Allocation of Gain on Proposed Sale of	)	ORDER NO. 5712a
Exchanges.	)	

**PROCEDURAL ORDER**

On May 28, 1993 U.S. West Communications (USWC) initiated the above captioned Docket by filing a Petition for Declaratory Rulings with the Montana Public Service Commission (PSC). The PSC subsequently issued a Notice of Petition and Intervention Deadline (Service Date: June 14, 1993). The PSC staff held a Scheduling Conference in this matter on July 6, 1993.

The PSC hereby issues this Procedural Order which shall govern the procedural and schedule requirements in this Docket. The applicable provisions of the Montana Administrative Procedure Act and the PSC's Administrative Rules also govern the procedures in this Docket. Title 2, Chapter 4, MCA, and Title 38, ARM. The provisions of this Order may only be amended by PSC action, or PSC staff action pursuant to delegated authority. (The PSC shall

maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.)

### Intervention

1. The PSC has received Petitions to Intervene from Blackfoot Telephone Cooperative, Range Telephone Cooperative, Nemont Telephone Cooperative, Mid-Rivers Telephone Cooperative, Triangle Telephone Cooperative and 3 Rivers Telephone Cooperative (purchasing companies), AT&T Communications, MCI Telecommunications, Ronan Telephone Company, the Montana Department of Administration - Information Services Division, Northwestern Telephone Systems (aka PTI Communications), and the Montana Consumer Counsel.

2. The deadline for filing Petitions to Intervene (set in the Notice of Petition) was June 30, 1993. Petitions to Intervene filed after that date must comply with ARM 38.2.2401 - 38.2.2406.

### Protective Order

3. The provision of information allegedly of a confidential or trade secret nature is governed by the provisions of the Protective Order issued on June 11, 1993 (PSC Order No. 5712,

Service Date: June 23, 1993).

Prehearing Briefing and Oral Argument

4. The PSC has set the following Prehearing Schedule for briefing and oral argument:

- (a) July 19, 1993: Filing and service of briefs.
- (b) July 29, 1993, 9:30 a.m.: Oral Argument in the Bollinger Hearing Room, 1701 Prospect Avenue, Helena, Montana.

(See Notice of Briefing and Oral Argument Schedule, Service Date: July 9, 1993.)

The issues to be discussed in the briefs and argument are: 1) whether the PSC has jurisdiction of the proposed sale of exchanges; and 2) the request by USWC that the PSC issue a declaratory ruling regarding ratemaking treatment of the gain on the sales. (Specifically, USWC requests that the PSC rule that all of the financial gain from the sale of exchanges be allocated to USWC shareholders, and none of the gain should be allocated, in any fashion, directly or indirectly, to USWC ratepayers in future rate cases.)

Service and Filing

5. Parties shall file copies of all pleadings, motions, discovery requests and responses, pre-filed testimony, briefs and all other documents, with the PSC, and serve all parties and other entities and individuals on the attached Service List, as described below. An original and six (6) copies of all discovery must be filed with the PSC, and an original and eleven (11) copies of all other documents. (Only one copy of proprietary documents shall be filed -- on yellow paper.)

6. One complete copy of all documents must be served by overnight mail (by a service which delivers on Saturdays) on all individuals listed on the attached Service List under the heading "Overnight Mail." One complete copy of all documents must be served by regular First Class mail on all individuals listed under the heading "Regular Mail." A copy of a cover letter describing the contents of all documents must be served by regular First Class mail on all individuals listed under the heading "Cover Letter." Notwithstanding the above, parties may agree to alter or limit service of discovery upon one another.

### Schedule

7. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment "A" which is attached hereto and incorporated herein by this reference.

### Discovery

8. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as "data requests" (informal interrogatories).

9. The PSC directs all parties to prepare data requests according to the following guidelines:

(a) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number and page number may be included in addition to, but not in lieu of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

(b) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited

to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(c) Examples of acceptable data requests follow:

PSC-500 RE: Purchased Gas Contracts  
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass  
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

10. The party receiving written discovery or data requests has five calendar days from receipt to file objections to the request(s). Notice of the objection shall be served upon the PSC and on all parties (as provided in Paragraphs 5 and 6 above). The PSC may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed a waiver of objections.

11. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to

compel, must serve its written objection(s) and requested relief simultaneously upon the PSC and parties within five calendar days after receipt of such response (as provided in Paragraphs 5 and 6 above). The PSC may dispose of such objection(s) by prompt ruling or may schedule argument. The PSC will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

12. Parties are encouraged to attempt to resolve all discovery disputes between themselves, before filing objections. Motions (regarding discovery) should contain a statement explaining the efforts taken to resolve the issue informally.

13. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

14. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the

case, defense, proceeding, or parts thereof.

15. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. See ARM 38.2.3301 through 38.2.3305.

### Testimony and Evidence

16. The PSC contemplates a complete identification of issues before the hearing. The PSC will closely scrutinize new issues or data in new areas introduced at the time of hearing, and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony or proceedings.

17. At hearing, the PSC will admit into the record all prefiled direct, answer, and rebuttal testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

18. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred



manner of identifying exhibits.

19. When cross-examination is based on a document not previously filed with the PSC, copies of the document must be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the PSC staff, and all parties. The last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the PSC and all parties.

20. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the PSC or presiding officer.

21. The PSC may allow citizens and citizen groups to make statements without submitting prepared written testimony. In addition, if they have prepared written testimony they may read it or have it adopted directly into the record.

22. The Montana Rules of Evidence in effect at the time of the hearing will apply.

23. Any party to this proceeding responding to written discovery from any other party or the PSC shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, see Rule 32, M.R.Civ.P. regarding admission of depositions).

#### Prehearing Motions and Conferences

24. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party and approved by the PSC. Upon a grant of oral argument, the requesting party shall notice

it for hearing before the PSC. All parties are encouraged to attempt to resolve procedural disputes informally.

25. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

26. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of USWC and other regulated utilities at any time.

#### Prehearing Memorandum

27. Each party shall submit a prehearing memorandum unless the parties agree to file jointly. The memorandum shall contain a list of all issues uncontested and contested; witnesses to testify; a proposed order of witnesses; a proposed order of cross-examination; and a list of all exhibits and discovery for introduction at hearing. Any special needs to accommodate witness sequence or scheduling should be identified in the prehearing memorandum. If a prehearing conference is scheduled,

the prehearing memorandum must be filed and served 48 hours prior thereto. If no prehearing conference is scheduled, the prehearing memorandum must be filed and served ten days before the hearing.

Satellite Hearings

28. The PSC may schedule and notice public satellite hearings, at a later date.

Done and Dated this 19th day of July, 1993 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ANDERSON, Chairman

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BOB ROWE, Vice Chairman

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DAVE FISHER, Commissioner

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NANCY MCCAFFREE, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

Service Date: July 33, 2994

**ATTACHMENT "A"**

Procedural Schedule

Docket No. 93.5.23, Order No. 5712a - USWC

<u>Deadline</u>	<u>Action</u>
July 12, 1993	Answers to Data Requests (except as provided below).
July 19, 1993	Answers to Data Requests Due RE: Tele-tech questions requiring engineering expertise, and questions served after July 1, 1993.
August 2, 1993	Prefiled Testimony due from all parties.
August 10, 1993	Data Requests on Prefiled Testimony due.
August 19, 1993	Answers to August 10 Data Requests due.
September 1, 1993	Prefiled Rebuttal/Cross-Answer Testimony due from all parties.
September 9, 1993	Data Requests due on September 1 Testimony.
September 13, 1993 (1:30 p.m.)	Prehearing Conference (tentative).
September 15, 1993	Answers to September 9 Data Requests due.
September 21, 1993	Hearing to Commence in Docket No. 93.5.23.